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Attorneys for Defendant/Counter-Plaintiff,  
 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL  
 CERAMICS, INC. dba GLIDEWELL  
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.  
 SACV11-01309-DOC(ANx)

**DECLARATION OF DR.  
 DENNIS MURPHY IN  
 SUPPORT OF KEATING  
 DENTAL ARTS, INC.'S  
 MOTIONS FOR SUMMARY  
 JUDGMENT**

Honorable David O. Carter

1 I, Dr. Dennis Murphy, hereby declare as follows:

2 I am a practicing dentist who has purchased dental restorations from  
3 Keating Dental Arts, Inc. ("Keating"). My dental office is located at 310  
4 Terrace Ave., Suite #102, Cincinnati, Ohio 45220. I have personal knowledge  
5 of the matters set forth herein. If called upon to testify, I could and would  
6 testify as follows:

7 1. I am licensed to practice dentistry in the state of Ohio. I received  
8 an undergraduate degree from the University of Cincinnati in 1973. I received a  
9 Doctor of Dental Surgery degree from the Ohio State University in 1977. I have  
10 been practicing as a licensed dentist for 35 years. During that time, it has been a  
11 regular part of my practice to treat patients in need of dental restorations.

12 2. To address my patients in need of dental restorations, it has been  
13 my practice to purchase crowns and bridges from dental laboratories that  
14 manufacture the restorations in response to my specifications. In this regard, I  
15 provide the dental laboratories with a prescription form that identifies the  
16 patient, the tooth (or teeth), and the specific dental restoration product that I  
17 would like manufactured for the patient.

18 3. Since I began practicing as a dentist in 1977, I have ordered dental  
19 restorations from a number of different dental laboratories. I have been ordering  
20 dental restorations from Keating since around 2004. I am aware of Glidewell  
21 Laboratories and began ordering products from them around the same time that  
22 I began ordering from Keating. After a couple of months, however, I decided I  
23 was better served ordering from Keating. Since this initial trial, I have not  
24 ordered any products from Glidewell.

25 4. I have ordered many different types of dental restorations from  
26 Keating, including porcelain-fused-to-metal crowns, gold crowns, and crowns  
27 containing zirconia.

28 5. The first time I ordered a crown containing zirconia from Keating

1 was in November 2006 when I ordered a “KDZ” crown. In 2006, Keating’s  
2 “KDZ” crown had a zirconia substructure with a porcelain overlay.

3 6. The first time I ordered a full contour zirconia crown from Keating  
4 was in June 2011 when I ordered what Keating calls a KDZ Bruxer crown. I  
5 ordered Keating’s KDZ Bruxer crown for one of my patients because I wanted a  
6 monolithic zirconia crown that would be stronger than a crown having a  
7 porcelain overlay.

8 7. I learned of Keating’s KDZ Bruxer product from speaking with  
9 Keating employees.

10 8. Attached as **Exhibit A** are true and correct copies of Keating  
11 Dental Arts prescription forms that I submitted to Keating to order KDZ Bruxer  
12 crowns for two different patients, one in November 2011 and the other in May  
13 2012.

14 9. In the order forms attached as Exhibit A, I specified the product  
15 that I was ordering by writing comments in the “Instructions” section of the  
16 form. On the form dated in November 2011, I wrote “#31 KDA BRUXZIR” to  
17 designate that I wanted a full contour zirconia crown for tooth #31. On the form  
18 dated in May 2012, I wrote “#3 BRUXIR” to once again designate that I wanted  
19 an all zirconia crown but for tooth #3 this time. I used the terms “bruxzir” and  
20 “bruxir” on the prescription forms because to me these terms indicate an all  
21 zirconia crown which is often used for bruxers. I knew I was ordering the  
22 crown from Keating and I wanted to receive a crown made by Keating.

23 10. When I wrote “BRUXZIR” or “BRUXIR” on the prescription  
24 form, I did not intend to order a crown made by Glidewell Laboratories. Nor  
25 did I intend to order a crown made from material provided by Glidewell  
26 Laboratories. When ordering the KDZ Bruxer crown, I did not think there was  
27 any affiliation between Keating and Glidewell Laboratories.

28 11. I see a lot of advertisements for all zirconia crowns that use the

1 term "bruxzir," or a similar spelling, to identify this type of crown. To me, the  
2 "zir" in "bruxzir" readily describes that the crown is made of zirconia. I also  
3 speak with other dentists about this and other products in the dental industry.  
4 From my experience, when I submitted the orders attached in Exhibit A to  
5 Keating, I understood the term "bruxzir," and any similar spellings, to simply  
6 refer to a full contour zirconia crown. To me, those terms did not identify a  
7 source for the crown or a source for the material from which the crown was  
8 made.

9 12. Soon after sending the prescription form attached as Exhibit A to  
10 Keating, I was contacted by a Keating employee to clarify my order.  
11 Specifically, the Keating employee asked me to confirm that I wanted to order  
12 Keating's KDZ Bruxer product. The Keating employee explained that the term  
13 "BruxZir" is a brand name of another dental laboratory, and the employee  
14 offered to return the order to me if I wanted to order from another dental  
15 laboratory. I confirmed that I wanted to order Keating's full contour zirconia  
16 crown.

17 I declare under penalty of perjury under the laws of the United States of  
18 America that the foregoing is true and correct.

19 Executed November 12, 2012, in Cincinnati, Ohio.

20  
21  
22   
23 Dr. Dennis Murphy  
24  
25  
26  
27  
28

# EXHIBIT A

CONFIDENTIAL ATTORNEY'S EYES ONLY



**Keating**  
Dental Arts  
Creating smiles everyday™

Phone: (949) 955-2100 Fax: (949) 955-2199  
16881 Hale Avenue, Irvine, CA 92606  
E-mail: shade@keatingdentalarts.com  
www.keatingdentalarts.com

Doctor's Account # MURP Phone # (513) 221-1558

Dr. DR. DENNIS MURPHY \*\*\*

PLEASE PRINT CLEARLY

Patient REDACTED

LAST

FIRST

Toll Free: (800)433-9833 Date Due In Office 11/21/11

**PLEASE SEND THE FOLLOWING**

- ☐ RX forms ☐ Mailing Labels  
☐ Boxes

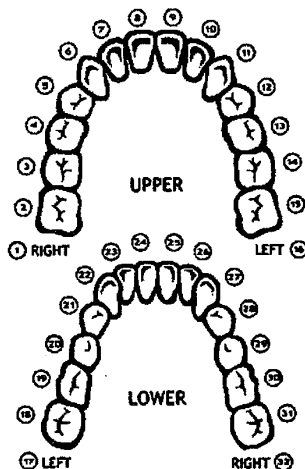
**SPECIAL ENCLOSURES** LAB USE ONLY

- ☐ Photo (s) ☐ Analog - \*  
☐ Models ☐ Implant Parts  
☐ Shade Tab ☒ Impression  
☐ Bite ☐ Other \_\_\_\_\_

**Rx SPECIFIC INSTRUCTIONS**  
\*STANDARD UNLESS SPECIFIED.

11/8/11

#31 KDA BRUNZIR



Signature: [Signature] D.D.S. License #: 15492

TERMS: Customer agrees to company policy as stated on reverse.

Age: 50 Sex: F

☐ Dr. to Die Trim ☐ Metal Try-In

☐ Finish to Porcelain

Please indicate the distribution of hues and the types of characterizations desired:

**SHADE INSTRUCTIONS**

Vita-Lumin: \_\_\_\_\_ Vita-3D: 2M3  
Chromascope: \_\_\_\_\_ Stump Shade: \_\_\_\_\_  
Noritake: \_\_\_\_\_ Other: \_\_\_\_\_



**BUCCAL COLLAR DESIGN**

☐ Hairline or \_\_\_\_\_ mm on Buccal  
☐ Porcelain Junction Margin\*  
☐ Porcelain Butt Margin (90 shoulder req.)

**METAL DESIGN**

☐ All Porcelain coverage  
☐ Metal Coping with Porcelain coverage\*  
☐ Metal Occlusal excluding Buccal CUSP  
☐ Metal Occlusal including Buccal CUSP

**PONTIC DESIGN**

☐ Sanitary ☐ Full Ridge Lap ☐ Modified Ridge Lap\* ☐ Buffer ☐ Ovale

**ANTERIOR DESIGN**



**OCCUSAL STAINING**

- ☐ None ☐ Medium  
☐ Light\* ☐ Dark

**IF NO OCCUSAL CLEARANCE**

- ☐ Metal Occlusion  
☐ Reduction Coping  
☐ Spot Opposing  
☐ Make Permanent Note

**PFM**

- ☐ Fused to Non-Precious\*  
☐ Fused to Semi-Precious  
☐ Fused to White High Noble  
☐ Fused to Yellow High Noble  
☐ Fused to Captek

LAB TIME: 5 DAYS

**IMPLANTS**

- ☐ Porcelain fused to Semi-Precious\*  
☐ Porcelain fused to White High Noble  
☐ Porcelain fused to Yellow High Noble  
☐ Porcelain fused to Captek  
☐ Procera All-Ceramic  
☐ KDZ Zirconia  
☐ Procera Custom Abutment:  
☐ Titanium ☐ Ceramic  
☐ Atlantis Custom Abutment:  
☐ Titanium\* ☐ Ceramic  
☐ 3i Encode

LAB TIME: 8 DAYS

**CAD/CAM**

- ☐ KDZ Zirconia LAB TIME: 5 DAYS  
☐ Procera Zirkon LAB TIME: 8 DAYS

**FULL CAST**

- ☐ High Noble 62\*-Type III  
☐ Gold inlay/onlay-Type II (JRVT)  
☐ Yellow Semi-Precious  
☐ Other \_\_\_\_\_  
Please Specify

LAB TIME: 4 DAYS

**REMOVABLES**

- ☐ KDA Denture ☐ Reline  
☐ KDA Premium Denture ☐ Custom Impression Tray  
☐ KDA Ultra Premium Denture ☐ Acrylic Stayplate  
☐ Cast Chrome Frame ☐ Valpast\* Partial Denture Complete  
☐ Setup Teeth in Wax ☐ TCS\* Partial Denture Complete  
☐ Partial Framework to Finish ☐ Delineator™

**ALL-CERAMIC**

- ☐ KDA Foil Veneer  
Stacked Feldspathic  
☐ IPS e.max\*  
☐ IPS Empress\*Esthetic

LAB TIME: 5 DAYS

**THERMOFORMED**

- ☐ Soft Nightguard  
☐ Bleaching Tray  
(Foam liner or reservoir)  
☐ Hard Night Guard  
(Thermofom)  
☐ Hard Night Guard  
(Hand waxed)  
☐ Ultra Guard  
(Soft & hard for extra comfort)  
☐ Clearsplint (Flexible)  
☐ Pro-Guard

LAB TIME: 4 DAYS

**COMPOSITES**

- ☐ Gradia

LAB TIME: 4 DAYS

**KDA-TEMPS**

- Abutments #s \_\_\_\_\_ Pontics #s \_\_\_\_\_  
☐ Wire\*  
☐ Cast Metal Frame  
☐ Splinted  
☐ Individual

LAB TIME: 4 DAYS

KDA-001973

CONFIDENTIAL ATTORNEY'S EYES ONLY



16881 Hale Avenue, Irvine, CA, 92606  
Email: shade@keatingdentalarts.com

800-433-9833  
Fax 949-955-2199

Doctor's Account # MURP Phone # (513) 224550  
Dr. DR. DENNIS MURPHY \*\*\*

Patient REDACTED

LAST FIRST

Date Due In Office 5/23/12

**PLEASE SEND:**

☐ RX forms ☐ Boxes ☐ Mailing labels

**ENCLOSURES**

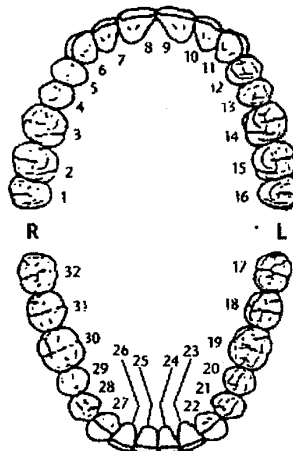
LAB USE ONLY

☐ Photo(s) ☐ Analog ☐ Models  
☒ Implant parts ☒ Impression ☐ Bite  
☐ Shade tab ☐ Other

**RX SPECIFIC INSTRUCTIONS**  
\* Standard unless specified

5/9/12

#3 Bruxer



Signature: [Signature]

License #: 15492

TERMS: Customer agrees to company policy as stated on reverse.

Age: 50 Sex: M  
☐ Dr. to die trim ☐ Metal try-in  
☒ Finish to porcelain

Please indicate the distribution of hues and the types of characteristics desired:

**SHADE INSTRUCTIONS**

Vita-Lumin: \_\_\_\_\_

Noritake: \_\_\_\_\_

Vita-3D: 3m2

Stump shade: \_\_\_\_\_



**BUCCAL COLLAR DESIGN**

- ☐ Hairline or \_\_\_\_\_mm buccal  
☐ Porcelain junction margin\*  
☐ Porcelain butt margin (90° shoulder required)

**IF NO OCCLUSAL CLEARANCE**

- ☐ Metal occlusion  
☐ Reduction coping  
☐ Spot opposing  
☐ Make permanent note

**ANTERIOR DESIGN**

- ☐ 1/4 Metal lingual  
☐ 1/2 Metal lingual  
☐ 3/4 Metal lingual

**METAL DESIGN**

- ☐ All porcelain coverage  
☐ Metal coping with porcelain coverage\*  
☐ Metal occlusal excluding buccal CUSP  
☐ Metal occlusal including buccal CUSP

**OCCLUSAL STAINING**

- ☐ None ☐ Light\*  
☐ Medium ☐ Dark

**PONTIC DESIGN**

- ☐ Modified ridge lap\*  
☐ Full ridge lap  
☐ Sanitary  
☐ Bullet  
☐ Ovate

- ☐ KDA Denture  
☐ KDA Premium Denture  
☐ KDA Ultra Premium Denture  
☐ Locator retained  
☐ Bar retained (Titanium bar)  
☐ Screw retained hybrid (Titanium bar)

**REMOVABLES**

- ☐ TCS\*/Valplast\* Partial Complete  
☐ TCS\*/Bego  
☐ Valplast\*/Bego  
☐ Cast chrome  
☐ Acrylic stayplate  
☐ Delineator™  
☐ Lab select complete design  
☐ Frame try-in  
☐ Frame w/occlus. rim  
☐ Frame w/set-up try-in  
☐ Finish

**PFM**

- ☐ Non-precious\*  
☐ Semi-precious  
☐ White high noble  
☐ Yellow high noble  
☐ Captek™

**IMPLANTS**

**CROWN**

- ☐ PFM- Semi-precious\*  
☐ PFM- White high noble  
☐ Full cast yellow semi-precious  
☐ Captek™  
☐ High noble 56  
☐ KDZ Max  
☐ KDZ Ultra  
☐ IPS® e.max

**ABUTMENT**  
Atlantis™

- ☐ Titanium\* ☐ Gold-hue  
☐ Zirconia  
☐ Titanium ☐ Zirconia  
☐ Gold anodized  
☐ Custom UCLA

**FULL CAST**

- ☐ High Noble 56-Type III  
☐ Gold inlay/onlay-Type II (JRVT)  
☐ White High Noble  
☐ White semi-precious  
☐ Yellow semi-precious

**METAL-FREE RESTORATIONS**

**KDZ Family (CAD/CAM)**

- ☒ KDZ Bruxer  
☐ KDZ Max  
☐ KDZ Ultra\*  
☐ Procera®

**Pressables**

- ☐ IPS® Empress Esthetic  
☐ Stained & glazed only\*  
☐ Cut-back & layered  
☐ Stump shade required  
☐ IPS® e.max  
☐ Stained & glazed only\*  
☐ Cut-back & layered  
☐ Stump shade required

**Veneers**

- ☐ KDA Foil Veneers (Stacked feldspathic porcelain)  
☐ IPS® Empress Esthetic\*  
☐ IPS® e.max  
☐ Stump shade required

**KDA TEMPS**

- ☐ Diagnostic wax-up  
Abutments #s: \_\_\_\_\_  
Pontics #s: \_\_\_\_\_  
☐ Wire\* ☐ Cast metal frame  
☐ Splinted ☐ Individual

**APPLIANCES**

- ☐ Night Guard - Astron CLEARsplint™  
☐ Night Guard - Hard Thermoformed  
☐ Bleaching Tray  
☐ Foam liner  
☐ Reservoir  
☐ Clear Pro-Guard  
☐ Night Guard - Hard Hand Waxed  
☐ Night Guard - Soft  
☐ Ultra Guard (hard/soft)  
☐ 1.0 mil Clear Ortho Retainer

KDA-002029